

### U.S. Supreme Court Examines How to Value “Just Compensation” in Tax Foreclosures

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On February 25, 2026, the U.S. Supreme Court heard oral arguments in *Pung v. Isabella County, Michigan*, a case that could significantly change how compensation is calculated when property is taken through tax foreclosure.

This case builds on the Court’s 2023 decision in *Tyler v. Hennepin County*, which held that governments may not keep surplus equity beyond what is owed in unpaid property taxes. *Pung* takes the issue a step further by asking a harder question: Should compensation be based on a property’s fair market value, or is the price obtained at a tax foreclosure auction enough?

#### From *Tyler* to *Pung*

In *Tyler*, the Supreme Court unanimously confirmed that property owners have a constitutional right to surplus equity after a tax foreclosure. However, the court did not address how “just compensation” should be measured when the government sells property through a tax sale, which often produces prices far below market value.

In *Pung*, a Michigan family lost their home over a relatively small tax debt. Although their home was estimated to be worth \$194,000, it sold at a tax foreclosure auction for only \$76,000. Lower courts ordered Isabella County to return the surplus above the tax debt—roughly \$73,000—but the family argues that this is insufficient. They contend the Constitution requires compensation based on the home’s full fair market value, which would entitle them to an additional \$118,000. The county maintains that the auction price should control because it resulted from a lawful and historically accepted tax foreclosure process.

#### History, Process, and a Possible Narrow Ruling

Although the Court agreed to review both Takings Clause and Excessive Fines Clause issues, oral arguments focused almost entirely on valuation. Several justices expressed

concern that adopting a fair-market-value rule could turn routine tax collection into complex, appraisal-driven litigation and significantly increase costs for local governments. At the same time, the court questioned whether the government could define “just compensation” by relying on its own forced-sale process, particularly when that process predictably lowers prices.

The justices also examined whether there is historical support for requiring compensation beyond tax sale proceeds and closely scrutinized the fairness of the auction process itself, including bidding restrictions and limited marketing. This line of questioning suggests the court may favor a narrower approach that treats auction price as presumptively valid, while allowing challenges where the foreclosure process is shown to be unfair or flawed.

## **Practical Implications**

If the court embraces a fair-market-value rule:

- **Valuation Exposure will Increase.** Counties could face liability for the difference between market value and tax debt, even where properties sell for far less at auction.
- **Government Procedures will Require Changes.** Efforts to approximate market value may require governments to implement new safeguards like minimum bids or appraisal-based surplus calculations, effectively turning local officials into ad hoc real estate valuers.
- **The Scope of Section 1983 Claims will Broaden.** Claims will increasingly target undervaluation, not just surplus retention, raising the stakes of post-foreclosure lawsuits.

The Supreme Court is expected to issue its decision by June 2026, and the outcome is likely to shape tax foreclosure practices nationwide.

The Municipal Law and Government Relations Group at Bodman will be keeping a close watch on the case and will issue further updates when there are relevant developments.

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